

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 853 /1996

Date of Decision: 28-10-96

Shri Chandrsinh M. Parmar &
Another,

Petitioner/s

Shri I. J. Naik,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Shri V. S. Masurkar,

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B. S. Hegde, Member (J).

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- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

B. S. Hegde
(B. S. HEGDE)

MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 853/96.

Dated this 28th, the Monday day of October, 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

1. Shri Chandrasinh Mohansinh Parmar,

2. Smt. Ramilaben Chandrasinh Parmar

Both residing at Silvassa,
P.O.: Silvassa - 396 230.

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Applicants

(By Advocate Shri I.J. Naik).

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1. Union Of India through

The Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block,
NEW DELHI.

2. The Administrator of U.T. of
Dadra and Nagar Haveli,
Administrator's Secretariat,
P.O. : Moti Daman - 396 210.

3. The Assistant Secretary (P),
Administrator's Office,
Dadra and Nagar Haveli,
P.O.: Silvassa - 396 230.

4. The Development Commissioner,
Daman and Diu,
Dadra and Nagar Haveli,
Secretariat,
P.O. : Moti Daman 396 210.

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Respondents.

5. The Assistant Director of
Education,
Dadra and Nagar Haveli,
P.O. : Silvassa - 396 230.

(By Advocate Shri V.S. Masurkar).

: O R D E R :

(PER.: SHRI B.S. HEGDE, MEMBER (J))

1. Heard Shri I.J. Naik for the applicant and
Shri V.S. Masurkar for the respondents.

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2. The prayer made in this O.A. is not to implement the transfer order issued by the respondents vide dated 28.06.1996 insofar as the applicants are concerned. The Tribunal vide its order dated 29.08.1996, on the basis of submissions made by the learned counsel for the applicant, had granted status-quo as on 29.08.1996 which is continued till date.

3. On behalf of the respondents, Shri V.S. Masurkar, urged that the application is not tenable. He contends that the learned counsel for the applicant obtained the ex-parte interim order on the basis of the order passed in O.A. No. 615/96 on 16.07.1996 without disclosing that the applicants have already been relieved by the order dated 09.07.1996 and the incumbents have already joined in the place of the applicants. The grounds of challenge are same in the present application also. It is further contended that the O.A. No. 615/96 was finally heard and the Tribunal was pleased to dismiss the O.A. on 05.09.1996, therefore, the present O.A. is required to be dismissed in limine. He also submits that the joint application filed by the applicants is not maintainable in law because although the applicants are husband and wife, the facts governing their case will be different. Besides that, pursuant to the transfer order the applicants have been relieved by the Head Master on 01.07.1996 which is clear from the leave report and instructions to join the duty place on 09.07.1996, therefore, the status-quo granted by the Tribunal has become infructuous because the

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applicants have already been relieved from the post at Silvassa to Surangi, the place where the applicants have been transferred.

4. I have considered the matter. Since the transfer order was a common order consisting of 146 teachers, which has been considered by the Tribunal in its order dated 05.09.1996 passed in O.A. No. 615/96 stating that though there is an allegation of malafides, but the same has not been made out and hence the ratio of R. Jayaraman does not apply in this case and the other decisions cited by the Learned Counsel for the applicant also does not apply because in this case the exigencies of service are urgent and if the applicants do not take over at the appointed place, the education of large number of school-going children is likely to suffer. Infact, it is also not possible to hold that the transfer is in the mid-academic year because the transfer order is issued on 28.06.1996, which cannot be treated as mid-term transfer. It is well settled that the transfer is not a condition of service but it is an incidence of service and the scope for interference by the Tribunal in orders of transfer is very limited. Accordingly, the Tribunal found that there was no merit in the O.A. and the same was dismissed. Against this order, the applicant filed a Review Petition vide R.P. No. 93/96 in O.A. No. 615/96 which has been dismissed by the Tribunal on 30.09.1996. Since the facts and circumstances in this case are similar to the one which has been considered by the Tribunal earlier, I am of the view that the status-quo order passed on 29.08.1996 has

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become infructuous as the applicants have been relieved from Silvassa before the status-quo order was passed and just because they happen to remain on leave, the relieving order cannot be treated as unjustified in view of the transfer order passed by the respondents.

5. In the circumstances, I see no merit in the O.A. and the same is dismissed but there will be no order as to cost. The interim order passed earlier stands vacated. The respondents are hereby directed to carry out the transfer order as expeditiously as possible. The leave availed by the applicants may be dealt with in accordance with the rules.

B. S. Hegde
(B. S. HEGDE)
MEMBER (J).

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